IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION (L) NO.619 OF 2006

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Verghese George ...Petitioner

v/s.

Union of India

(M.E.S. Department) ...Respondents

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Mr.S.U.Kamdar i/b V.L. Panjwani for the Petitioner.

Ms.S.I.Shah for the Respondents.

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CORAM: D.K.DESHMUKH, J.

DATED: 14TH NOVEMBER,2006

P.C.:

1. The relief sought by this application filed under

Section 9 of the Arbitration Act is for appointment of the commissioner to take measurement of the work which according to the Petitioner he has executed on the site.

2. The prayer is opposed by the Respondents. The learned Counsel appearing for the Respondents submitted that the contract has already been awarded to a different party on 23-10-2006 and that party has already started work on 26-10-2006.

3. The Petitioner has disputed that actually on the site the new contractor has started the work.

4. The Respondents also informed that as per the terms of the contract the arbitrator has already been appointed.

5. Taking overall view of the matter, therefore, in my opinion, following order would meet the ends of justice.

O R D E R

(i) The Prothonotary & Sr.Master is directed to

appoint a Civil Engineer from the panel maintain by the Prothonotary & Sr.Master for the purpose of taking measurements of the work alleged to have been executed by the Petitioner on the site.

(ii) The Commissioner appointed by the Prothonotary & Sr.Master shall visit the site after due notice to both the sides.

(iii) On visiting the site, if the Commissioner finds that the new contractor has already started the work, then the Commissioner shall do nothing further and submit a report to that effect.

(iv) But in case the Commissioner finds that the new contractor has not started the work yet, then the Commissioner shall take measurements and make inventory of the materials which according to the Petitioner belongs to him and submit a report to the Arbitrator, who may be appointed to decide the disputes between the parties. The Arbitrator shall consider the report in accordance with law.

(v) Petition disposed of.

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